THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal From Order No. 278 Of 2004
Old F.A.F.O. No. 800 of 1986

The State of U.P. through the Collector,
Tehri Garhwal … **Appellant.**

Versus

1. Smt. Bhuri Devi, aged 55 years, W/O Kali Ram,,
   R/O Village Dalmare, P.O. & Patti Hindolakhal,
   District Tehri Garhwal.
   (Claimant)
2. Uttar Pradesh State Road Transport Corporation
   Dehradun.
3. Mahavir Singh S/O Tej Singh, Driver, Truck No.
   U.T.C.-9889, P.W.D., Pauri Garhwal.

… **Respondents.**

Sri Nand Prasad, learned Standing Counsel for the appellant.

Date June 07, 2006.

(Hon'ble B.S. Verma, J.)

This appeal under Section 110-D of the Motor Vehicles Act, 1939 (***for short the Act***) has been preferred against the judgment and award dated 13-06-1986 passed by the Motor Accident Claims Tribunal Tehri Garhwal (***in short the Tribunal***) in M.A.C. Petition No. 13 of 1984, Smt. Bhuri Devi Vs. U.P.S.R.T.C. and others, whereby the learned Tribunal awarded compensation of Rs, 19,400/- in favour of the claimant recoverable from the Opposite Parties No. 1 and 2, U.P.S.R.T.C. and State of U.P. in equal shares. Aggrieved, the State of U.P. has come up in appeal.

At the outset, it may be mentioned that in the motor accident, which occurred on 8-9-1983 involving two vehicles Bus No. UTF-3705 belonging to the U.P.S.R.T.C. and Truck No. UTC-9889, besides the deceased Govind Ram and Prakash Chandra, two sons of the deceased, one Bachan Singh (deceased) and some other

persons sustained grievous injuries and died. Consequently, separate claim petitions were preferred by the claimants in respect of this motor accident. It may be added that this Court vide Judgment dated 22-04-2006, passed in A.O. No. 903 of 2001, The State of U.P. Vs. Smt. Guddi Devi and others, arising out of M.A.C. Petition No. 20 of 2004, out of the same motor vehicle accident has already considered the points involved in the present appeal and ultimately, the ultimately preferred by the appellant was dismissed on merits. It may also be added that this Court vide judgment dated 15-5-2006 has dismissed A.O. No. 908 of 2001, State Vs. Smt. Pyari Devi and others, preferred by the State on merit.

Relevant facts giving rise to this appeal are that besides other persons who suffered fatal in the accident, two sons of the claimant-respondent no. 1 Smt. Bhuri Devi, Govind Ram aged 25 years and Prakash Chandra, 20 years, lost their life in a motor vehicle accident and some others who sustained fatal injuries, which occurred on 8.9.1983 at 1 p.m between Gooler and Shivpuri on Rishikesh Road within P.S. Munni-ki-Reti who was travelling in bus No. UTF 3705 belonging to UPSRTC, which was being driven rashly and negligently at a high speed. At the place of accident, Truck No. UTC-9889 belonging to the appellant was also coming and there was sufficient place for two vehicles to cross each. Due to the negligence of the driver of the bus, the bus fell on the bank of river Ganga. Both the drivers of two vehicles were negligent in driving; hence the compensation of Rs. 4,40,000/- has been claimed by the widow and mother of the deceased.

The opposite parties contested the claim petition by filing their written statements. The O.P. Nos. 2 and 3 the owner and driver of the truck have admitted the death of the deceased persons and petitioner Bhuri Devi was paid sum of Rs. 15,000/- each for the death of two sons by the State Government. They

asserted that on the ill-fated day, the bus was coming from Deoprayag to Rishikesh while the truck in question was coming from Rishikesh to Deoprayag. At the spot the road was narrow. The truck was ascending while the bus was coming downwards. When the two vehicles came face to face, the truck driver applied brakes and stopped the truck. However, the rear body of the bus collided with the truck due to which the driver of bus lost control and due to the accident, several passengers of the bus died on the spot. There was no negligence on the part of the driver of the truck.

The U.P.S.R.T.C. filed separate written statement and asserted that the truck driver was negligent, therefore, the Corporation is not liable to pay compensation.

On the pleadings of the parties, the learned Tribunal framed necessary issues in the case. After recording evidence of the parties and perusing the evidence, the learned Tribunal came to the conclusion that the accident resulting in the death of Govind Ram and Prakash Chandra was caused due to rash and negligent acts on the part of the driver of the two vehicles involved in the accident and accordingly, the U.P.S.R.T.C. and State were fastened liability to pay compensation. After dealing with the evidence on the point of quantum of compensation, the learned Tribunal ultimately awarded compensation of Rs. 19,400/- to the claimants after adjusting the amount of Rs. 30,000/- already paid by the State to the claimant.

The impugned judgment and award has been assailed mainly on the ground that the truck in question belonged to Public Works Department Pauri Garhwal, but the same was not arrayed as party to the proceedings. The findings of the tribunal on the point of negligence has also been challenged and it was contended that the finding of the Tribunal is not based on evidence.

I have heard learned counsel for the appellant and have perused the entire material on record.

In the course of arguments, learned Standing Counsel for the State-appellant Sri Nand Prasad fairly conceded that this Court while deciding A.O. No. 903 of 2001, State of U.P. Vs. Smt. Guddi Devi and others has already considered the points involved in the present appeal. He has also submitted that no other new issue is left to be considered by this Court in the present appeal. I have gone through the earlier judgment passed by this Court in A.O. No. 903 of 2001 and A.O. No. 908 of 2001. I am of the view that in the present appeal no other new point is involved for consideration, therefore, since the present appeal is squarely covered by the earlier judgment dated 22-4-2006, passed in A.O. No. 903 of 2001, which was dismissed on merit, this appeal may be dismissed in terms of the said judgment.

In view of the order dated 22-4-2006 passed by this Court in A.O. No. 903 of 2001, State of U.P. Vs. Smt. Guddi Devi and others, this appeal preferred by the State is dismissed on merit in terms of said judgment. No order as to costs.

The amount in deposit with this Court, if any, be transmitted to the Motor Accident Claims Tribunal concerned for being paid to the claimant.

(B.S. Verma, J.)

R.C.P.